



House of Representatives

General Assembly

File No. 261

February Session, 2018

House Bill No. 5491

House of Representatives, April 5, 2018

The Committee on Banking reported through REP. LESSER of the 100th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

AN ACT CONCERNING THE AMOUNT OF MONEY FINANCIAL INSTITUTIONS MUST LEAVE IN A JUDGMENT DEBTOR'S ACCOUNT DURING A BANK ACCOUNT EXECUTION.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 52-367b of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2018*):

3 (a) Execution may be granted pursuant to this section against any
4 debts due from any financial institution to a judgment debtor who is a
5 natural person, except to the extent such debts are protected from
6 execution by sections 52-352a, 52-352b, 52-352c of the general statutes,
7 revision of 1958, revised to 1983, 52-354 of the general statutes, revision
8 of 1958, revised to 1983, 52-361 of the general statutes, revision of 1958,
9 revised to 1983 and section 52-361a, as well as by any other laws or
10 regulations of this state or of the United States which exempt such
11 debts from execution.

12 (b) If execution is desired against any such debt, the plaintiff

13 requesting the execution shall make application to the clerk of the
14 court. The application shall be accompanied by a fee of one hundred
15 five dollars payable to the clerk of the court for the administrative costs
16 of complying with the provisions of this section which fee may be
17 recoverable by the judgment creditor as a taxable cost of the action. In
18 a IV-D case, the request for execution shall be accompanied by an
19 affidavit signed by the serving officer attesting to an overdue support
20 amount of five hundred dollars or more which accrued after the entry
21 of an initial family support judgment. If the papers are in order, the
22 clerk shall issue such execution containing a direction that the officer
23 serving such execution shall, within seven days from the receipt by the
24 serving officer of such execution, make demand (1) upon the main
25 office of any financial institution having its main office within the
26 county of the serving officer, or (2) if such main office is not within the
27 serving officer's county and such financial institution has one or more
28 branch offices within such county, upon an employee of such a branch
29 office, such employee and branch office having been designated by the
30 financial institution in accordance with regulations adopted by the
31 Banking Commissioner, in accordance with chapter 54, for payment of
32 any such nonexempt debt due to the judgment debtor and, after
33 having made such demand, shall serve a true and attested copy of the
34 execution, together with the affidavit and exemption claim form
35 prescribed by subsection (k) of this section, with the serving officer's
36 actions endorsed thereon, with the financial institution officer upon
37 whom such demand is made. The serving officer shall not serve more
38 than one financial institution execution per judgment debtor at a time,
39 including copies thereof. After service of an execution on one financial
40 institution, the serving officer shall not serve the same execution or a
41 copy thereof upon another financial institution until receiving
42 confirmation from the preceding financial institution that the judgment
43 debtor had insufficient funds at the preceding financial institution
44 available for collection to satisfy the execution, provided any such
45 additional service is made not later than forty-five days from the
46 receipt by the serving officer of such execution. After service of an
47 execution on a financial institution, the serving officer shall not

48 subsequently serve the same execution or a copy thereof upon such
49 financial institution if an electronic direct deposit from a readily
50 identifiable source described in subsection (c) of this section was made
51 to the judgment debtor's account during the look-back period, as
52 described in subsection (c) of this section. If no such deposit was made,
53 the serving officer may subsequently serve the same execution or a
54 copy thereof upon such institution, provided such execution has not
55 expired or otherwise become unenforceable.

56 (c) If any such financial institution upon which such execution is
57 served and upon which such demand is made is indebted to the
58 judgment debtor, the financial institution shall remove from the
59 judgment debtor's account the amount of such indebtedness not
60 exceeding the amount due on such execution before its midnight
61 deadline, as defined in section 42a-4-104, except that the financial
62 institution shall leave the lesser of the account balance or one thousand
63 dollars in the judgment debtor's account. Notwithstanding the
64 provisions of this subsection, if electronic direct deposits that are
65 readily identifiable as [(1)] exempt federal veterans' benefits [, Social
66 Security benefits, including, but not limited to, retirement, survivors'
67 and disability benefits, supplemental security income benefits, exempt
68 benefits paid by the federal Railroad Retirement Board or the federal
69 Office of Personnel Management, unemployment compensation
70 benefits exempt under section 52-352b, or child support payments
71 processed and received pursuant to Title IV-D of the Social Security
72 Act, or (2) wages] were made to the judgment debtor's account during
73 the look-back period of either the sixty-day period preceding the date
74 that the execution was served on the financial institution, or [, with
75 regard to federal benefits,] such greater period as required by federal
76 law, then the financial institution shall leave the lesser of the account
77 balance or [one] two thousand dollars in the judgment debtor's
78 account. [, provided nothing] Nothing in this subsection shall be
79 construed to limit a financial institution's right or obligation to remove
80 such funds from the judgment debtor's account if required by any
81 other provision of law or by a court order. The judgment debtor shall
82 have full and customary access to such funds left in the judgment

83 debtor's account pursuant to this subsection. The financial institution
84 may notify the judgment creditor that funds have been left in the
85 judgment debtor's account pursuant to this subsection. Nothing in this
86 subsection shall alter the exempt status of funds which are exempt
87 from execution under subsection (a) of this section or under any other
88 provision of state or federal law, or the right of a judgment debtor to
89 claim such exemption. Nothing in this subsection shall be construed to
90 affect any other rights or obligations of the financial institution with
91 regard to the funds in the judgment debtor's account.

92 (d) If any funds are removed from the judgment debtor's account
93 pursuant to subsection (c) of this section, upon receipt of the execution
94 and exemption claim form from the serving officer, the financial
95 institution shall (1) forthwith mail copies thereof, postage prepaid, to
96 the judgment debtor and to any secured party that is party to a control
97 agreement between the financial institution and such secured party
98 under article 9 of title 42a at the last-known address of the judgment
99 debtor and of any such secured party with respect to the affected
100 accounts on the records of the financial institution, and (2) mail notice
101 to the judgment debtor as required by 31 CFR 212.6 and 212.7. The
102 financial institution shall hold the amount removed from the judgment
103 debtor's account pursuant to subsection (c) of this section for fifteen
104 days from the date of the mailing to the judgment debtor and any such
105 secured party, and during such period shall not pay the serving officer.

106 (e) To prevent the financial institution from paying the serving
107 officer, as provided in subsection (h) of this section, the judgment
108 debtor shall give notice of a claim of exemption by delivering to the
109 financial institution, by mail or other means, the exemption claim form
110 or other written notice that an exemption is being claimed and any
111 such secured party shall give notice of its claim of a prior perfected
112 security interest in such deposit account by delivering to the financial
113 institution, by mail or other means, written notice thereof. The
114 financial institution may designate an address to which the notice of a
115 claim of exemption, or a secured party claim notice, shall be delivered.
116 Upon receipt of such notice, the financial institution shall, within two

117 business days, send a copy of such notice to the clerk of the court
118 which issued the execution.

119 (f) (1) Upon receipt of an exemption claim form or a secured party
120 claim notice, the clerk of the court shall enter the appearance of the
121 judgment debtor or such secured party with the address set forth in
122 the exemption claim form or secured party claim notice. The clerk shall
123 forthwith send file-stamped copies of the exemption claim form or
124 secured party claim notice to the judgment creditor and judgment
125 debtor with a notice stating that the disputed funds are being held for
126 forty-five days from the date the exemption claim form or secured
127 party claim notice was received by the financial institution or until a
128 court order is entered regarding the disposition of the funds,
129 whichever occurs earlier, and the clerk shall automatically schedule
130 the matter for a short calendar hearing. The claim of exemption filed
131 by such judgment debtor shall be prima facie evidence at such hearing
132 of the existence of the exemption.

133 (2) Upon receipt of notice from the financial institution pursuant to
134 subsection (c) of this section, a judgment creditor may, on an ex parte
135 basis, present to a judge of the Superior Court an affidavit sworn
136 under oath by a competent party demonstrating a reasonable belief
137 that such judgment debtor's account contains funds which are not
138 exempt from execution and the amount of such nonexempt funds.
139 Such affidavit shall not be conclusory but is required to show the
140 factual basis upon which the reasonable belief is based. If such judge
141 finds that the judgment creditor has demonstrated a reasonable belief
142 that such judgment debtor's account contains funds which are not
143 exempt from execution, such judge shall authorize the judgment
144 creditor to submit a written application to the clerk of the court for a
145 hearing on the exempt status of funds left in the judgment debtor's
146 account pursuant to subsection (c) of this section. The judgment
147 creditor shall promptly send a copy of the application and the
148 supporting affidavit to the judgment debtor and to any secured party
149 shown on a secured party claim notice sent to the judgment creditor
150 pursuant to subdivision (1) of this subsection. Upon receipt of such

151 application, the clerk of the court shall automatically schedule the
152 matter for a short calendar hearing and shall give written notice to the
153 judgment creditor, the judgment debtor and any secured party shown
154 on a secured party claim notice received by the clerk of the court. The
155 notice to the judgment creditor pursuant to subsection (c) of this
156 section shall be prima facie evidence at such hearing that the funds in
157 the account are exempt funds. The burden of proof shall be upon the
158 judgment creditor to establish the amount of funds which are not
159 exempt.

160 (g) If an exemption claim is made or a secured party claim notice is
161 given pursuant to subsection (e) of this section, the financial institution
162 shall continue to hold the amount removed from the judgment debtor's
163 account for forty-five days or until a court order is received regarding
164 disposition of the funds, whichever occurs earlier. If no such order is
165 received within forty-five days of the date the financial institution
166 sends a copy of the exemption claim form or notice of exemption or a
167 secured party claim notice to the clerk of the court, the financial
168 institution shall return the funds to the judgment debtor's account.

169 (h) If no claim of exemption or secured party claim notice is
170 received by the financial institution within fifteen days of the mailing
171 to the judgment debtor and any secured party of the execution and
172 exemption claim form pursuant to subsection (d) of this section, the
173 financial institution shall, upon demand, forthwith pay the serving
174 officer the amount removed from the judgment debtor's account, and
175 the serving officer shall thereupon pay such sum, less such serving
176 officer's fees, to the judgment creditor, except to the extent otherwise
177 ordered by a court.

178 (i) The court, after a hearing conducted pursuant to subsection (f) of
179 this section, shall enter an order determining the issues raised by the
180 claim of exemption and claim by a secured party of a prior perfected
181 security interest in such deposit account. The clerk of the court shall
182 forthwith send a copy of such order to the financial institution. Such
183 order shall be deemed to be a final judgment for the purposes of

184 appeal. No appeal shall be taken except within seven days of the
185 rendering of the order. The order of the court may be implemented
186 during such seven-day period, unless stayed by the court.

187 (j) Except as otherwise provided in subsection (c) of this section, if
188 both exempt and nonexempt moneys have been deposited into an
189 account, for the purposes of determining which moneys are exempt
190 under this section, the moneys most recently deposited as of the time
191 the execution is served shall be deemed to be the moneys remaining in
192 the account.

193 (k) The execution, exemption claim form and clerk's notice
194 regarding the filing of a claim of exemption shall be in such form as
195 prescribed by the judges of the Superior Court or their designee. The
196 exemption claim form shall be dated and include a checklist and
197 description of the most common exemptions, instructions on the
198 manner of claiming the exemptions and a space for the judgment
199 debtor to certify those exemptions claimed under penalty of false
200 statement.

201 (l) If records or testimony are subpoenaed from a financial
202 institution in connection with a hearing conducted pursuant to
203 subsection (f) of this section, the reasonable costs and expenses of the
204 financial institution in complying with the subpoena shall be
205 recoverable by the financial institution from the party requiring such
206 records or testimony, provided, the financial institution shall be under
207 no obligation to attempt to obtain records or documentation relating to
208 the account executed against which are held by any other financial
209 institution. The records of a financial institution as to the dates and
210 amounts of deposits into an account in the financial institution shall, if
211 certified as true and accurate by an officer of the financial institution,
212 be admissible as evidence without the presence of the officer in any
213 hearing conducted pursuant to subsection (f) of this section to
214 determine the legitimacy of a claim of exemption made under this
215 section.

216 (m) If there are moneys to be removed from the judgment debtor's

217 account, prior to the removal of such moneys pursuant to subsection
218 (c) of this section, the financial institution shall receive from the
219 serving officer as representative of the judgment creditor a fee of eight
220 dollars for the financial institution's costs in complying with the
221 provisions of this section which fee may be recoverable by the
222 judgment creditor as a taxable cost of the action.

223 (n) If the financial institution fails or refuses to pay over to the
224 serving officer the amount of such debt, not exceeding the amount due
225 on such execution, such financial institution shall be liable in an action
226 therefor to the judgment creditor named in such execution for the
227 amount of nonexempt moneys which the financial institution failed or
228 refused to pay over, excluding funds [of up to one thousand dollars]
229 which the financial institution [in good faith] allowed the judgment
230 debtor to access pursuant to subsection (c) of this section. The amount
231 so recovered by such judgment creditor shall be applied toward the
232 payment of the amount due on such execution. Thereupon, the rights
233 of the financial institution shall be subrogated to the rights of the
234 judgment creditor. If such financial institution pays exempt moneys
235 from the account of the judgment debtor over to the serving officer
236 contrary to the provisions of this section, such financial institution
237 shall be liable in an action therefor to the judgment debtor for any
238 exempt moneys so paid and such financial institution shall refund or
239 waive any charges or fees by the financial institution, including, but
240 not limited to, dishonored check fees, overdraft fees or minimum
241 balance service charges and legal process fees, which were assessed as
242 a result of such payment of exempt moneys. Thereupon, the rights of
243 the financial institution shall be subrogated to the rights of the
244 judgment debtor.

245 (o) Except as provided in subsection (n) of this section, no financial
246 institution or any officer, director or employee of such financial
247 institution shall be liable to any person with respect to any act done or
248 omitted in good faith or through the commission of a bona fide error
249 that occurred despite reasonable procedures maintained by the
250 financial institution to prevent such errors in complying with the

251 provisions of this section.

252 (p) Nothing in this section shall in any way restrict the rights and
253 remedies otherwise available to a judgment debtor or any such secured
254 party at law or in equity.

255 (q) Nothing in this section shall in any way affect any rights of the
256 financial institution with respect to uncollected funds credited to the
257 account of the judgment debtor, which rights shall be superior to those
258 of the judgment creditor.

259 (r) For the purposes of this subsection, "exempt" has the same
260 meaning as provided in subsection (c) of section 52-352a. Funds
261 deposited in an account that has been established for the express
262 purpose of receiving electronic direct deposits of public assistance or
263 of Title IV-D child support payments from the Department of Social
264 Services shall be exempt.

| | | |
|---|-----------------|---------|
| This act shall take effect as follows and shall amend the following sections: | | |
| Section 1 | October 1, 2018 | 52-367b |

BA *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note***State Impact:*** None***Municipal Impact:*** None***Explanation***

The bill makes changes to transactions between private entities and does not result in a fiscal impact to the state or municipalities.

The Out Years***State Impact:*** None***Municipal Impact:*** None

OLR Bill Analysis**HB 5491*****AN ACT CONCERNING THE AMOUNT OF MONEY FINANCIAL INSTITUTIONS MUST LEAVE IN A JUDGMENT DEBTOR'S ACCOUNT DURING A BANK ACCOUNT EXECUTION.*****SUMMARY**

By law, a creditor may obtain a court-ordered judgment against someone who owes the creditor money (debtor). The creditor may have an execution issued by the court served on any financial institution where the debtor has an account.

This bill (1) broadens the circumstances in which the bank must leave in the account the lesser of \$1,000 or the account balance, (2) increases the amount that must be left in the account if it contains readily identifiable federal veterans' benefits, and (3) modifies a bank's liability if it fails or refuses to pay such an execution.

Existing law, unchanged by the bill, exempts from execution any interest in property up to \$1,000 in value (CGS §52-352b(r)).

EFFECTIVE DATE: October 1, 2018

EXEMPT FUNDS

Under current law, a bank must leave at least \$1,000 in a debtor's account if electronic deposits into the account within the past 60 days are readily identifiable as wages or one of the following exempt benefits:

1. federal veterans' benefits;
2. Social Security benefits, including retirement, survivors' and disability benefits;

3. supplemental security income benefits;
4. certain exempt benefits paid by the federal Railroad Retirement Board or Office of Personnel Management;
5. certain exempt unemployment compensation benefits; or
6. child support payment processed and received pursuant to federal law.

Under the bill, the bank must automatically leave the lesser of \$1,000 or the account balance, regardless of the source of the funds. But if a deposit was made to the account in the 60 days before the execution was served (or longer if federal law requires) that is readily identifiable as federal veterans' benefits, then the bank must leave the lesser of \$2,000 or the account balance. (Under federal law, (31 C.F.R. 212.2) all veterans' benefits are exempt from garnishment)).

FINANCIAL INSTITUTION LIABILITY

The bill also changes a financial institution's liability if it fails or refuses to pay such a debt. Under current law, the financial institution is liable to the creditor for the total amount of nonexempt money it failed or refused to pay, excluding up to \$1,000 the financial institution in good faith left in the account. The bill makes a conforming change removing the \$1,000 limit, thereby excluding any funds left in an account under the bill's provisions. The bill also eliminates language specifying that the financial institution must have left the funds in the account in good faith to qualify for exemption from such liability.

COMMITTEE ACTION

Banking Committee

Joint Favorable

Yea 10 Nay 9 (03/20/2018)